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8 **UNITED STATES DISTRICT COURT**
9 **WESTERN DISTRICT OF WASHINGTON**

10 DISCOVERORG, LLC,

11 Plaintiff,

12 v.

13 HIREVERGENCE, LLC, PERCH
14 SECURITY, INC., SIENNA
15 GROUP, LLC, AND MDJ
16 GROUP, LLC,

16 Defendants.

Case No. 3:17-cv-6045

COMPLAINT

JURY DEMAND

1 Plaintiff DiscoverOrg, LLC (“DiscoverOrg”), for its complaint against
2 HireVergence, LLC (“HV”), Perch Security, Inc. (“Perch”), Sienna Group, LLC
3 (“Sienna”), and MDJ Group, LLC (“MDJ”), alleges as follows:

4 **PARTIES**

5 1. DiscoverOrg is a Delaware limited liability company with its principal
6 place of business in Vancouver, Washington.

7 2. HV is a Florida limited liability company with a principal place of
8 business in Tampa, Florida.

9 3. Perch is a Florida corporation with a principle place of business in
10 Tampa, Florida.

11 4. Sienna is a Florida limited liability company with its principal place of
12 business in Tampa, Florida.

13 5. MDJ is a Florida limited liability company with a principle place of
14 business in Tampa, Florida.

15 6. Upon information and belief, MDJ is the parent company of HV, Perch
16 and Sienna.

17 **JURISDICTION AND VENUE**

18 7. This action asserts the following claims against the following
19 Defendants:

- 20 a. Against HV for Breach of Contract (First Claim for Relief),
21 violation of the Computer Fraud and Abuse Act arising under 18
22 U.S.C. § 1030 *et seq.* (Second Claim for Relief), Theft of Trade
23 Secrets arising under 18 U.S.C. § 1832 *et seq.* (Third Claim for
24 Relief), and Misappropriation of Trade Secrets arising under RCW
25 19.108 *et seq.* (Fourth Claim for Relief).
26 b. Against HV, Perch, Sienna, and MDJ for violation of the Computer
27 Fraud and Abuse Act arising under 18 U.S.C. § 1030 *et seq.* (Second
28 Claim for Relief), Theft of Trade Secrets arising under 18 U.S.C.

§ 1832 *et seq.* (Third Claim for Relief), and Misappropriation of Trade Secrets arising under RCW 19.108 *et seq.* (Fourth Claim for Relief).

8. This Court has subject matter jurisdiction pursuant to 28 U.S.C. 1332, as the parties are completely diverse in citizenship and the amount in controversy exceeds \$75,000, and separately under 18 U.S.C. §§ 1331 and 1338(a) and (b) because DiscoverOrg asserts claims arising under Federal Law. This court also has supplemental jurisdiction for the state law claims pursuant to 28 U.S.C. § 1367.

9. This Court has personal jurisdiction over HV because HV has consented to the jurisdiction of the courts of this State in the contract at issue. This Court has personal jurisdiction over HV, Perch, Sienna, and MDJ pursuant to RCW 4.28.185 because each has committed tortious acts within this State. Additionally, on information and belief, HV, Perch, Sienna, and MDJ each advertise their products and services within the State of Washington, direct their products and services through the stream of commerce into the State of Washington, or otherwise have sufficient minimum contacts with the State of Washington so as to be subject to the personal jurisdiction of its courts.

10. Venue is proper in this Court under 28 U.S.C. 1391(b)(2) because HV has agreed that all claims in connection with the contract at issue shall be brought in the courts of this State. Moreover, venue is proper in this Court because a substantial part of the events giving rise to the claims against HV, Perch, Sienna, and MDJ occurred in this State.

FACTS AND ALLEGATIONS

A. DiscoverOrg's Database

11. DiscoverOrg is a provider of business-to-business marketing data, which it delivers to clients via a password-secured, online graphical user interface. DiscoverOrg uses technology, computers, and electronic communication systems to provide subscribers access to its database of marketing information profiling

1 businesses in the United States and globally.

2 12. DiscoverOrg has made substantial investments in infrastructure and
3 resources to support its database and ensure that it is of the highest quality.
4 DiscoverOrg employs more than 150 research analysts focused on building,
5 managing, and updating DiscoverOrg's database, resulting in timely and
6 comprehensive data being made available to DiscoverOrg's clients. DiscoverOrg
7 has expended substantial labor, time, resources, effort, and money to select, gather,
8 collect, organize, generate, arrange, and disseminate the timely and continuously
9 updated information DiscoverOrg provides in its database. In total, DiscoverOrg
10 employs more than 450 people and has made significant investment in developing
11 and purchasing software, hardware, and other equipment to continuously update
12 and support the accuracy and comprehensiveness of its database, and deliver access
13 to its clients. DiscoverOrg's database exhibits DiscoverOrg's decisions and input as
14 to the selection, arrangement, orchestration, compilation, and presentation of the
15 organizational charts, contacts, and other information collected and assembled by
16 DiscoverOrg's analysts.

17 13. DiscoverOrg's database is valuable to companies seeking information to
18 assist in their efforts to market their products and services. DiscoverOrg has
19 licensed subscription access to thousands of companies who pay tens, and
20 sometimes hundreds, of thousands of dollars in licensing fees for the right to access
21 and use DiscoverOrg's database.

22 14. The value of DiscoverOrg's database is related to and dependent upon
23 its proprietary and non-public nature. Accordingly, DiscoverOrg takes more than
24 reasonable steps to protect the security of its proprietary information contained in
25 its database. For example, DiscoverOrg limits access to its database to only
26 authorized users pursuant to restrictive license agreements, which limit the number
27 of users who have access to DiscoverOrg's database. DiscoverOrg password
28 protects access to its database and utilizes security measures such as mail

1 monitoring and list protection to further secure and ensure the integrity of
2 DiscoverOrg's database.

3 **B. HV Enters a License Agreement with DiscoverOrg**

4 15. On or around September 30, 2015, HV entered into a license agreement
5 with DiscoverOrg to access and use certain data in its database, comprised of an
6 order form and the End User License Agreement (together, the "Agreement").

7 16. The Agreement provides in part:

8 "Licensee [HV] shall not access or use the Licensed Materials for
9 the benefit of or on behalf of any person or entity except
10 Licensee.... Licensee shall not permit anyone who is not an
11 Authorized User, to use any username or password or otherwise
12 access or use the Licensed Materials. Licensee shall not
13 redistribute, sublicense, transfer, sell, offer for sale, or disclose any
14 of the Licensed Materials to any third party."

15 (Agreement, § 5.2.)

16 17. An "Authorized User" may only be "a natural person who is an
17 employee of Licensee", except with DiscoverOrg's express written permission,
18 and each Authorized User must be designated by Licensee. (*Id.*, § 5.1.)

19 18. The Agreement further provides that "Upon termination of this
20 Agreement, Licensee shall cease accessing the Licensed Materials or using the
21 Licensed Materials in any way." (*Id.*, § 5.2.)

22 **C. HV Breaches Agreement with DiscoverOrg**

23 19. Upon information and belief, HV, Perch, and Sienna are subsidiaries of
24 MDJ, a strategic technology investment firm in Florida. On its website, MDJ
25 represents that HV, Perch, and Sienna are its portfolio companies.

26 20. In direct violation of the Agreement, HV granted access to
27 DiscoverOrg's technology and Licensed Materials (as defined in the Agreement) to
28 Perch and Sienna, who used the Licensed Materials for their respective sales and
marketing efforts without compensation to DiscoverOrg and without

1 DiscoverOrg's express written consent.

2 21. During 2017, DiscoverOrg was attempting to sell a license to its product
3 to Perch, and eventually provided Perch with a 3-day trial account, expecting that if
4 successful, Perch would purchase a subscription. However, On
5 November 27, 2017, a Perch employee informed DiscoverOrg via email that it
6 would not purchase a subscription because a "partnering company" had a
7 DiscoverOrg subscription and that the partnering company "will be sharing this for
8 now" with Perch.

9 22. DiscoverOrg immediately informed a representative of both MDJ and
10 HV that giving Perch access to DiscoverOrg's proprietary technology and Licensed
11 Materials was not permissible. The MDJ and HV representative responded by
12 making the representation that Perch was mistaken and was not using HV's
13 license. DiscoverOrg has since learned that HV, in violation of the Agreement,
14 impermissibly granted Perch access to DiscoverOrg's proprietary technology and
15 Licensed Materials without compensation to or authorization from DiscoverOrg.
16 HV did this by granting Perch access to DiscoverOrg's proprietary technology and
17 Licensed Materials using HV's license and password.

18 23. DiscoverOrg has since also learned that Perch is not the only MDJ
19 company impermissibly accessing and using DiscoverOrg's proprietary technology
20 and Licensed Materials. DiscoverOrg's records show that Sienna is also
21 impermissibly using HV's license and passwords to unlawfully access
22 DiscoverOrg's proprietary technology and Licensed Materials, all without
23 authorization from DiscoverOrg.

24 24. Perch, Sienna, and MDJ accessed DiscoverOrg's computer system
25 without authorization and extracted and commercially exploited DiscoverOrg's
26 proprietary data, a license to which has a very substantial market value. Perch,
27 Sienna, and MDJ misappropriated and exploited DiscoverOrg's data knowing that
28 it is non-public, commercially-valuable, and subject to a restrictive license

1 agreement.

2 25. HV, Perch, Sienna, and MDJ knowingly and willfully accessed and used
3 DiscoverOrg's proprietary information, and they did so with the unlawful purpose
4 of misappropriating DiscoverOrg's proprietary technology and circumventing the
5 purchase of a license agreement for each company.

6 26. Upon information and belief, MDJ profited from and could have stopped
7 these unlawful actions because it is the parent company of HV, Perch, and Sienna.
8 Moreover, upon information and belief, MDJ and its portfolio companies HV,
9 Perch, and Sienna share common representatives. For example, DiscoverOrg has
10 information that it believes shows that an individual from MDJ unlawfully accessed
11 and used DiscoverOrg's proprietary database with the unlawful purpose of
12 misappropriating DiscoverOrg's proprietary data and circumventing the purchase
13 of a license agreement for one or more of MDJ's portfolio companies Perch and
14 Sienna.

15 **FIRST CLAIM FOR RELIEF**

16 **(Breach of Contract)**

17 27. DiscoverOrg incorporates herein by reference the allegations in
18 paragraphs 1 through 26.

19 28. HV entered the Agreement with DiscoverOrg, which was duly made and
20 binding on both parties.

21 29. HV breached the Agreement by granting access to DiscoverOrg's
22 technology and licensed materials to Perch, Sienna, and MDJ.

23 30. HV's breach of the Agreement was knowing and intentional.

24 31. DiscoverOrg has been damaged by HV's actions through the lost
25 opportunity to realize licensing revenue and the diminution of the market value of
26 its proprietary information. These direct damages resulted naturally and
27 necessarily from the HV's wrongful conduct. HV did or should have foreseen that
28 such wrongful conduct would harm DiscoverOrg.

32. By reason of the foregoing, HV is liable to DiscoverOrg for damages in an amount to be proven at trial and, pursuant to the terms of the Agreement, DiscoverOrg's reasonable attorney fees.

SECOND CLAIM FOR RELIEF

(Computer Fraud and Abuse Act, 18 U.S.C. § 1030 *et seq.*)

33. DiscoverOrg incorporates herein by reference the allegations in paragraphs 1 through 32.

34. DiscoverOrg's computer system and database comprise "protected computers" within the meaning of 18 U.S.C. § 1030(e)(2).

35. HV, Perch, Sienna, and MDJ each knowingly and with intent to defraud DiscoverOrg, accessed DiscoverOrg's protected computers without authorization and thereby obtained valuable information from such protected computers using interstate communication.

36. Each of HV, Perch, Sienna, and MDJ's actions constitute violations of 18 U.S.C. §§ 1030(a)(2)(C) and 1030(a)(4).

37. Each of HV, Perch, Sienna, and MDJ's unauthorized access of DiscoverOrg's computer system has caused loss to DiscoverOrg of more than \$5,000 in value.

38. By reason of the foregoing, DiscoverOrg is entitled to compensatory damages against HV, Perch, Sienna, and MDJ in an amount to be determined at trial pursuant to 18 U.S.C. § 1030(g).

THIRD CLAIM FOR RELIEF

(Theft of Trade Secrets - 18 U.S.C. § 1832 *et seq.*)

39. DiscoverOrg incorporates herein by reference the allegations in paragraphs 1 through 38.

40. DiscoverOrg gathers, organizes, generates, collects, and assembles in-depth, commercially-valuable information (including reporting structures, contact information, and other data) expending substantial time, labor, and expense.

1 DiscoverOrg's database and the information contained therein comprise a
2 compilation of business information. Information from DiscoverOrg's database is
3 used in interstate commerce.

4 41. The compilation of information in DiscoverOrg's database derives
5 independent economic value from not being generally known to, and not being
6 readily ascertainable through proper means by, those who are not licensed by
7 DiscoverOrg to access the database. Non-licensees can obtain economic value from
8 the disclosure or use of the information in DiscoverOrg's database.

9 42. DiscoverOrg has taken reasonable measures to protect keep the
10 information in its database secret by limiting access to those customers who agree
11 to the terms of the access in the licensing agreement, and requiring password
12 authentication to access the database through its secure online portal. DiscoverOrg
13 also does its best to monitor access to the database and use of the information to
14 further ensure its security.

15 43. HV, Perch, Sienna, and MDJ's each used improper means, including
16 theft, unauthorized access to a protected computer, and inducement to breach a
17 duty to maintain secrecy, to obtain access to and acquire information from
18 DiscoverOrg's database. HV, Perch, Sienna, and MDJ each knew or had reason to
19 know at the time it obtained, and at the times it used, DiscoverOrg information that
20 such information was obtained from persons owing DiscoverOrg a duty to maintain
21 the secrecy thereof.

22 44. HV, Perch, Sienna, and MDJ each attempted to and did knowingly and
23 without authorization download, copy, and duplicate information from
24 DiscoverOrg's proprietary database. HV, Perch, Sienna, and MDJ each received
25 and possessed information from DiscoverOrg's proprietary database that HV,
26 Perch, Sienna, and MDJ knew to have been converted without authorization.

27 45. HV, Perch, Sienna, and MDJ willfully and maliciously misappropriated
28 DiscoverOrg's trade secrets by, including but not limited to, HV and MDJ

1 obtaining login credentials that were issued only to HV and unlawfully giving them
2 to Perch and Sienna, thereby accessing DiscoverOrg's computer systems without
3 authorization, copying the information contained therein, and using that
4 information for financial gain.

5 46. DiscoverOrg has been damaged by each of HV, Perch, Sienna, and
6 MDJ's actions through the lost opportunity to realize licensing revenue and the
7 diminution of the market value of its proprietary information. HV, Perch, Sienna,
8 and MDJ have each been unjustly enriched by the use of valuable marketing and
9 sales information without paying compensation and through the consummation of
10 business transactions that would not have occurred without use of the stolen
11 information. DiscoverOrg would, in the alternative, be entitled to a reasonable
12 royalty for each of HV, Perch, Sienna, and MDJ's use of the information.

13 47. By reason of the foregoing, HV, Perch, Sienna, and MDJ are each liable
14 to DiscoverOrg for damages and unjust enrichment or a reasonable royalty, in an
15 amount to be proven at trial. DiscoverOrg is also entitled to exemplary damages
16 and its reasonable attorney fees. Finally, DiscoverOrg is entitled to an injunction
17 preventing HV, Perch, Sienna, and MDJ from continuing to possess or use
18 information obtained from DiscoverOrg's database.

19 **FOURTH CLAIM FOR RELIEF**

20 **(Uniform Trade Secrets Act – RCW 19.108 *et seq.*)**

21 48. DiscoverOrg incorporates herein by reference the allegations in
22 paragraphs 1 through 47.

23 49. Pursuant to the Agreement between HV and DiscoverOrg, only HV was
24 to have limited access to DiscoverOrg's trade secret materials, such as its
25 proprietary technology and Licensed Materials.

26 50. Under Agreement of the parties coupled with the confidence and trust
27 given to HV by DiscoverOrg, a confidential relationship was created between HV
28 and DiscoverOrg.

1 51. DiscoverOrg's trade secret materials, such as its proprietary technology
2 and Licensed Materials, has never been accessible to the public.

3 52. Additionally, DiscoverOrg utilized more than reasonable security
4 measures to prevent misappropriation of its confidential and proprietary trade
5 secret materials.

6 53. HV, Perch, Sienna, and MDJ each misappropriated DiscoverOrg's trade
7 secrets by impermissibly using HV's license to access and use DiscoverOrg's
8 proprietary technology and Licensed Materials without DiscoverOrg's permission.

9 54. Such use of DiscoverOrg's trade secret information constitutes
10 misappropriation under the Washington Uniform Trade Secret Act, RCW 19.108 *et*
11 *seq.*

12 55. If HV, Perch, Sienna, and MDJ are permitted to continue their conduct,
13 DiscoverOrg will be irreparably harmed. DiscoverOrg has been and continues to be
14 damaged in an amount to be proven at trial and also in a manner and amount that
15 cannot be fully measured or compensated in economic terms. Such irreparable
16 damage will continue unless HV, Perch, Sienna, and MDJ's conduct is enjoined
17 during the pendency of this action and thereafter.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, DiscoverOrg prays for the following relief:

20 1. Entry of judgment in its favor and against HV on its First Claim for
21 Relief;

22 2. Entry of judgment in its favor against HV, Perch, Sienna, and MDJ on its
23 Second, Third and Fourth Claims for Relief;

24 3. Entry of judgment in its favor against HV, Perch, Sienna, and MDJ on all
25 of its Claims for Relief that each Defendant's unlawful actions were willful and
26 knowing;

27 4. As to its First Claim for Relief, its direct damages against HV and its
28 parent company MDJ in an amount to be proven at trial, exemplary damages for

1 willful breach, and its reasonable attorney fees;

2 5. As to its Second Claim for Relief, compensatory damages against each of
3 HV, Perch, Sienna, and MDJ in an amount to be proven at trial, pursuant to 18
4 U.S.C. § 1030 *et seq.*;

5 6. As to its Third Claim for Relief, its actual damages and unjust
6 enrichment or a reasonably royalty, in an amount to be proven at trial, exemplary
7 damages for willful misappropriation, an injunction enjoining HV, Perch, Sienna,
8 and MDJ from using misappropriated products or services, and its reasonable
9 attorney fees against each of HV, Perch, Sienna, and MDJ, pursuant to 18 U.S.C.
10 § 1832 *et seq.*;

11 7. As to its Fourth Claim for Relief, its actual damages and unjust
12 enrichment or a reasonably royalty, in an amount to be proven at trial, exemplary
13 damages for willful misappropriation, an injunction enjoining HV, Perch, Sienna,
14 and MDJ from using misappropriated products or services, and its reasonable
15 attorney fees against each of HV, Perch, Sienna, and MDJ, pursuant to RCW
16 19.108 *et. seq.*;

17 8. Immediate and permanent injunctive relief enjoining HV, Perch, Sienna,
18 and MDJ from using DiscoverOrg's misappropriated products or services;

19 9. An award of DiscoverOrg's costs of suit, including the costs of experts
20 and reasonable attorneys' fees as permitted by law;

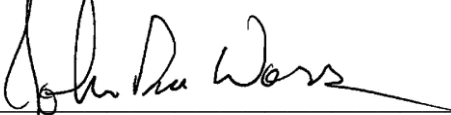
21 10. Entry of a declaratory judgment that HV breached the Agreement and
22 that conduct by each of HV, Perch, Sienna, and MDJ's was a violation of the
23 Computer Fraud and Abuse Act, 18 U.S.C. § 1030 *et seq.*, the Protection of Trade
24 Secrets Act, 18 U.S.C. § 1832 *et seq.*, and the Uniform Trade Secrets Act, RCW
25 19.108 *et seq.*;

26 11. An award of pre- and post-judgment interest; and

27 12. Such other relief as the Court may deem just and equitable.
28

1 Dated: December 14, 2017

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